

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re N.H. et al., Persons Coming Under
the Juvenile Court Law.

CONTRA COSTA COUNTY
CHILDREN AND FAMILY SERVICES
BUREAU,

Plaintiff and Respondent,

v.

A.M.,

Defendant and Appellant.

A155930

(Contra Costa County
Super. Ct. Nos. J1700986, J1700987)

A.M., the mother of five-year-old N.H. and her one-year-old sister K.H., appeals from exit orders of the dependency court awarding sole physical custody of the little girls to their previously non-custodial father, Ricardo, and shared legal custody to both parents. (See Welf. & Inst. Code, § 362.4 [authorizing custody orders upon termination of jurisdiction].) Mother contends the court abused its discretion in denying her physical custody of her daughters, and that she should have been granted sole or, at a minimum, shared physical custody of them. We affirm.

BACKGROUND

The little girls were detained from mother's custody on an emergency basis after police responded to a report that they had been left outside on the street unsupervised, and then discovered they and their three older half-siblings were living with mother in

deplorably squalid conditions. Subsequently, respondent Contra Costa County Children & Family Services Bureau (the agency) initiated these two dependency cases, along with cases concerning the girls' older half-siblings (a 13-year-old sister, a 12-year-old brother and a 9-year-old sister). The little girls' father, Ricardo, who had broken off his relationship with mother and moved out, had no stable home, and the two little girls were placed in separate foster homes. Mother then pled no contest to allegations she had failed to protect or adequately supervise them, by subjecting them to living conditions, detailed in the petitions (and the parties' appellate briefs), that were "deplorable," "unsanitary" and "grossly unsafe," and without adequate food, medical items or necessities of daily life.

By the time of the disposition hearing several months into the case, father had moved into his mother's home. Acting pursuant to Welfare and Institutions Code section 361.2, subdivision (b)(2), the juvenile court placed the little girls in his custody, ordered family maintenance services for father and reunification services for mother. The court also advised mother that as long as the children were placed with their father, she was not entitled to any minimum period of time to work toward the resumption of physical custody and that at the next review hearing, the court could grant sole physical and legal custody to one parent and terminate jurisdiction.

A contested six-month review hearing subsequently took place (with testimony), spanning multiple hearing dates and culminating on November 7, 2018. The agency reported that father was meeting all of the children's needs, he had completed a parenting class, and the social worker felt the children were safe in his care. By this point, mother had moved into a suitable, new home where she resided with her own mother and her other children, had completed her case plan requirements, and the living conditions in her home were no longer unsafe for her children. Still, though, several episodes during the reunification period had raised concerns about her parenting judgment. Chief among them, there were unanswered questions as to whether mother, who had no valid driver's license, was driving the children without a license anyway and had gotten into a car accident (a subject about which mother had been evasive), an incident in which mother

went to work and left the little girls alone to be supervised by their older siblings who themselves needed to be supervised because of autism and developmental disabilities, and an incident at a water park in which mother left her children unattended in or near a pool that ended with at least two of the children in the pool without life vests and a lifeguard yelling at one of the older siblings to go to one of the younger ones who should not have been left alone. The agency also was concerned about the children's exposure in mother's home to their grandmother's boyfriend who sometimes slept there; he had a criminal history involving aggression and driving under the influence and, after a background check, was not approved for unsupervised contact with the children and yet the agency had conflicting information as to whether he actually lived there (mother denied that he did). In addition, the parents' interpersonal relationship had deteriorated badly, with frequent altercations and exchanges of angry text messages and each feeling harassed by the other.

At the conclusion of the contested review hearing, and acting on the agency's recommendation with which counsel for the minors concurred, the juvenile court terminated jurisdiction and awarded joint legal custody of the girls to both parents and sole physical custody to father. It entered findings that returning the girls to mother's custody would create a substantial risk of harm to their safety, protection or physical or emotional well-being.

Despite the award of sole physical custody to father, however, the juvenile court granted mother a considerable amount of unsupervised, overnight visitation with her daughters: three overnight weekends every month (from Friday evening to Sunday evening) plus significant periods of time during school holidays and breaks, including every other week during the summer break, a week during the winter school vacation and half of the children's spring break.

This appeal followed.

DISCUSSION

Mother argues the court abused its discretion by awarding sole physical custody to Ricardo. Her arguments, however, amount to re-arguing the weight of the evidence. She argues Ricardo had not been actively involved in the children's lives and had failed to discover the unsafe and unsanitary conditions of mother's home, and stresses evidence of various angry communications he had with mother during the case. By contrast, she contends, she had "overall taken good care of the children and was active in their schooling," had completed her case plan, her children were very attached to her, and she could offer them a home with their grandmother and other siblings. These arguments are insufficient to establish an abuse of discretion.

The termination of dependency jurisdiction does not always mean that no child protection issues remain. (See *In re Chantal* (1996) 13 Cal.4th 196, 212.) As we have previously explained, "a finding that neither parent poses any danger to the child does not mean that both are equally entitled to half custody, since joint physical custody may not be in the child's best interests for a variety of reasons." (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268 [affirming award of sole physical custody to father where mother was granted visitation and joint legal custody]; see also *In re John W.* (1996) 41 Cal.App.4th 961, 965 ["The [dependency] court is not required to apply a per se rule that the child's time must be split in half as long as neither parent poses an active threat"].)

Here, there is substantial evidence that joint physical custody was not in the children's best interests. To be sure, father was not a model parent (he, like mother, had a criminal background; and until recently he had played little role in the two little girls' upbringing). And both parents squabbled and exchanged vituperative communications with each other, even threats. But, as noted, the court found that returning the girls to *mother's* custody would create a substantial risk of harm to their safety, protection or physical or emotional well-being, and that finding is unchallenged on appeal. Indeed, that finding is amply supported by evidence of significant safety concerns for the children

while in mother's care that we have noted. Although the conditions of mother's home no longer posed a threat to the children, and she had completed a parenting class and engaged in weekly therapy, she exercised exceedingly poor judgment for her children's safety on more than one occasion that, thankfully, did not result in any harm to them. In addition, granting physical custody to her risked exposing the children more regularly to an adult (their grandmother's boyfriend) who wasn't suitable to be left alone with them. We cannot say in these circumstances the court abused its discretion in concluding the children's best interests were served by living with their father, while granting ample time for mother to visit overnight with her children on a regular, unsupervised basis.

Mother has not directed our attention to any authority suggesting the court had no discretion in these circumstances to grant physical custody of the children to their father while allowing her ample visitation. Our recent decision in *In re C.W.* (2019) 33 Cal.App.5th 835, discussed in mother's reply brief, involved quite different circumstances; in that case, we reversed an award of sole legal and physical custody to a father who had engaged in no reunification services and posed a current danger to his son whereas, by contrast, the mother posed none. (See *id.* at pp. 864–866.) In addition, unlike here, there were no red flags about mother's continued lack of parenting judgment.

DISPOSITION

The exit custody orders are affirmed.

STEWART, J.

We concur.

KLINE, P.J.

MILLER, J.

Contra Costa County Children & Family Servs. Bureau v. A.M. (A155930)